EMPLOYMENT TRIBUNALS

Claimant: **Mr. N. Rutter**

Respondent: **J R Dynamics Limited**

Heard at: **The Newcastle Civil and Family Courts and Tribunal Centre via CVP.**

On:- **23 August 2024.**

Before: **Employment Judge T.R. Smith**

Representation

Claimant: **In person**

Respondent: Mr. Rosinski (Managing director)

Reserved Judgement

The claimant's complaint of breach of contract is not well founded and is dismissed.

Reasons

Background

1.Unfortunately, at the commencement of the hearing of this claim, the claimant experienced difficulty in logging on to the video technology. 2.Fortunately, the claimant experienced no difficulties during the course of the hearing.

3.However, when the tribunal asked the parties to log off with a view to considering its judgement and then to logon, the claimant, unfortunately, was not able to join the hearing for the purposes of listening to the oral judgement that the tribunal proposed to deliver.

4.Arrangements were therefore made for a message to be sent to both parties that the tribunal reserved its judgement and would give written reasons, at a later date.

The issue.

5.Did the respondent breach the claimant's contract of employment in respect of non-payment of part of his notice? The parties agreed the period in dispute was from 16 April to 28 April 2024. Damages, if a breach was proven, were agreed in the sum of £1833.43.

6.It was expressly conceded by the claimant that, despite the contents of his claim form, he was not pursuing a complaint in respect of pension contributions.

The evidence

7.The tribunal heard affirmed evidence from both the claimant and Mr. Rosinski, the latter being the respondent's managing director.

8.No documents were placed before the tribunal, save for the fact the claimant was able to share the contents of an email dated 28 March 2024, part of which is reproduced in this judgement.

Findings of fact

9.The tribunal made the following findings of fact, on the balance of probabilities. Whilst there was other factual dispute between the parties, it was not necessary for the tribunal to address those disputes for the purposes of determining the agreed issue.

10.The claimant commenced employment with the respondent on 01 March 2024 as an embedded system developer.

11.Under the terms of the claimant's contract of employment his place of work were the respondent premises at One, Innovation way Cramlington, Northumberland.

12.The contract was subject to a three-month probationary period. Termination by either party was subject to 4 weeks' notice.

13.The respondent perceived the claimant's productivity was such that he was unsuitable for the post and decided on 28 March 2024 to terminate his employment within the probationary period.

14.The respondent discussed with the claimant whether he wished to leave forthwith or whether he wished to serve out his notice.

15.The claimant selected the latter option. The claimant and Mr. Rosinski discussed where the work to be completed under the notice would be performed, and it was agreed that the claimant could work from home with equipment supplied by the respondent. The tribunal found the this was expressly on the basis that the claimant would ensure that the work allocated to him would be performed efficiently.

16.On the above basis the claimant was given four weeks' notice.

17.There was a contemporaneous email which supported much of the tribunal's above finding of fact.

18.In an e-mail sent by Mr Rosinski on 28/3/24 he said *" Hello Nick, as per our conversation just now , this is to confirm that we would like to terminate your PP[probationary period] with one months' notice. As agreed you will be working from home in April using a company pc…..*

19.Working from home was not a success. The respondent considered the claimants productivity and contact ability was at an unacceptable level, whilst working from home. His responses to emails were erratic and delayed. It is proper to record the claimant asserted there were difficulties with Google mail and the equipment supplied to him, which he conceded in cross examination may well have affected his productivity.

20.The important fact was that both parties accepted that there were communication difficulties. Where the fault lay was not a matter the tribunal was required to determine.

21.In the circumstances Mr Rosinski asked the claimant to return to the respondent premises to work out his notice. He refused.

22.Further discussions took place which resulted in a compromise whereby the claimant would logon and report regularly whilst ensuring work allocated to him was performed efficiently. The claimant then contended this was micromanagement which affected his well-being and constituted harassment.

23.In Mr Rosinski's opinion, and the tribunal found it was genuinely held on reasonable grounds, the claimant continued to fail to work efficiently (although not necessarily due to any express fault on his part) and was asked to return to work at the respondent premises. He refused. Arrangements were made for the respondent's equipment to be collected from the claimant's property. The tribunal considered that this was in the expectation the claimant would then attend the respondent premises. He did not. The claimant did not demur in the collection of the respondent's property, refused to attend work and stated he expected to be paid the residue of his notice.

24.Mr Rusedski then decided the respondent would cease to pay the claimant that the claimant because he refused to attend his place of work.

Discussion

25.The parties are required in law to perform their obligations under a contract of employment. Provided neither party acts capriciously in seeking to enforce those obligations there cannot be a breach, even if one party may believe that what it is been asked to do is unreasonable see **Buckland -v- Bournemouth University Higher Education Corporation [2010] IRLR 445.**

26.There is implied into every contract of employment an obligation that an employee will obey an employer's reasonable instructions and carry out work allocated conscientiously.

27.The claimant had no contractual right to insist on working from home under the terms of his contract when he was placed on notice. His place of work was the respondent premises. There was no contractual variation as there was no consideration for any agreement to work from home. Consideration is vital, see **Tenon FM Ltd -v- Cawley 2018 EWHC 1972.** Thus the claimant had no right to work from home and at any stage the respondent could insist he worked from their premises.

28.If the tribunal was wrong on that point and there was an oral variation it was on condition that the claimant worked productively.

29.For whatever reasons that was not achieved.

30.In the circumstances as that condition was not satisfied the respondent was entitled to insist the claimant returned to its premises to perform the residue of his notice..

31.The tribunal considered that requiring the claimant to work from the respondent's premises was a lawful instruction and was not given capriciously.

32.The claimant refused to comply with that instruction. In the circumstances he broke a fundamental term of the contract and the respondent was entitled to regard the contract as having been terminated. In such circumstances its obligation to pay the claimant ceased.

33.For the above reasons the claimant's complaint must therefore be dismissed.

Employment Judge T.R.Smith

Dated 26 August 2024

Notes

Public access to employment tribunal decisions

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/